

Syed Walliuddin and anr. Vs. Mst. Rafiq Bibi and anr.

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Court : Rajasthan

Decided On : Apr-14-1986

Reported in : 1986(2)WLN696

Judge : Panna Chand Jain, J.

Appeal No. : S.B. Civil Second Appeal No. 366 of 1965

Appellant : Syed Walliuddin and anr.

Respondent : Mst. Rafiq Bibi and anr.

Advocate for Def. : Shri. A.R. Salim, Shri. Salim

Advocate for Pet/Ap. : Shri. Ajeet Bhandari, Shri. Bhandari

Disposition : Appeal allowed

Judgement :

Panna Chand Jain, J.

1. This appeal under Sec. 100 of the Code of Civil procedure is directed against the judgment and decree dated 13th January, 1964, passed by the learned District Judge, Ajmer in Civil First Appeal No 294 of 1960, affirming the judgment and decree dated 23rd August, 1960 passed by the learned Addl. Munsif No. 1, Ajmer City, Ajmer in Civil suit No 140 of 1956(183/1958).

2. Briefly stated the facts of the case are that the plaintiffs appellants filed a suit for rent and eviction of the suit premises against the defendant respondents on the basis of a registered leave deed alleged to have been executed by the defendant in his favour on 2nd April, 1947. The suit was contested only by respondent No. 1 and the suit proceeded ex parte against the another respondent. The plaintiff stated in the plaint that he was a landlord of the property No. AMC 11/133 situated at Imambada Mohalla, Khadiman Ajmer and that defendants Mst. Rafika Bibi & Zainul Salbeem are his tenants w.e.f. 29th March, 1947, on a monthly rent of Rs. 10/-. It was also contended by the plaintiff that originally the said property was leased out, to the defendants by the plaintiff along with Sheikh Fida Hussain but, on 19th May, 1948, Sheikh Fida Hussain sold his share in this property to the plaintiff by means of a registered sale deed and since then the plaintiff has been the exclusive owner of the property and was entitled to recover its rent. According to the plaintiff, the defendants failed to pay rent and committed defaults in the payment of rent since 29th November, 1952. Before filing the suit, the plaintiff served a notice on the defendants on or about 28th December, 1955, terminating their tenancy. The plaintiff claimed a sum of Rs. 316/- as arrears of rent and ejectment of the defendants from the suit premises. Defendant No. 1 did not appear in the trial court and the case proceeded ex parte against him. Defendant No. 1 denied the tenancy and contended that she never paid any rent to the plaintiff. It was contended by defendant No. 1 that about 9 to 10 years ago, defendant No. 1 executed a document at the instance of defendant No. 2, alleged to be in respect of some money trans action. It was also contended that while reposing full confidence in defendant No. 2 and believing him in what he was then representing, the defendant had executed the document without the same having been read out and explained its contents to her. Defendant No. 1 also pleaded that she is an illiterate and pardanashin lady. She also pleaded that no lease deed was ever executed by her in respect of the suit premises much less in favour of the plaintiff and Sheikh Fida Hussain and, if the above document executed by the instance of defendant is the same as alleged by the plaintiff it is absolutely fraudulent, illegal, void and inoperative against her.

3. On the pleadings of the parties, the learned trial court framed the following issues:

(1) Is the plaintiff landlord of the property No. AMC IX/133 in suit and are the same defendants his joint tenants in this property since 29-3-1947 on the monthly rent of Rs. 10/-;

(2) (a) were notices issued by the plaintiff on the defendants and, if so, were they refused by the defendants as alleged in para 3 of the plaint.

(b) In case issue No 2 (a) is decided in favour of the plaintiff, is the notice of ejectment valid and in accordance with the provisions of law?

(3) Does the plaint not disclose any cause of action against the defendants having accrued against them on 29-1-1956 as stated in para 5 of the plaint?

(4) Is the alleged lease deed dated 2-4-1947 fraudulent, illegal and inoperative against the defendant No. 1 for reason alleged in paras 8 to 12 of the written statement?

(5) Is the suit by the plaintiff alone not maintainable for reasons alleged in para 13 of the written statement?

(6) To what relief, if any, is the plaintiff entitled?

4. Both the parties adduced evidence, both oral and documentary. The learned Additional Munsif No. 1, Ajmer City, Ajmer dismissed the suit of the plaintiff with costs vide judgment and decree dated 23rd August, 1960. The appeal was preferred by the plaintiff and the learned District Judge vide his judgment and decree dated 13th January, 1964, dismissed the appeal affirming the judgment and decree passed by the learned Additional Munsif Aggrieved by the judgment and decree passed by the learned appellate Court, dated 13th January, 1964, the plaintiff has filed this second appeal before this Court under Section 100 of the Code of Civil Procedure.

5. Shri Ajeet Bhandari, learned counsel for the appellant, submitted that the finding recorded by the learned lower courts on issues Nos. 1 and 4 are perverse. It was urged that the learned District Judge totally ignored the material evidence on record, misread the evidence of 'Saved AsafAli and did not examine Exs. 10, 12,

13 and 18 which were relevant for the decision of the case. Shri Bhandari also challenged the finding recorded by the learned lower courts about the defendant's contention that she was an illiterate Pardanasin lady.

6. The main contention raised by Shri Bhandari is that Ex. 1 is a registered lease deed and the plaintiff proved the execution of the document by the defendant. Shri Bhandari submitted that from the written statement itself it is clear that the execution of the document was admitted by defendant No. 1 and further the document should be taken to be proved by virtue of sections 59 and 60 of the Registration Act. Shri Bhandari also submitted that when defendant No. 1 had taken the plea that the document is fraudulent, illegal, void and inoperative and was got executed by defendant No. 2 through misrepresentation, the execution of the document by defendant No. 1 should be taken to have been admitted. His submission is that since the execution of the document Ex. 1 is admitted, the burden heavily lies upon defendant No. 1 to prove that the document was void and inoperative against her and it was the outcome of some fraudulent advice practiced upon him. His further submission is that there is no finding recorded by the learned lower courts that any fraud was practised upon her, or that defendant No. 2 got it executed from her by misrepresentation, or otherwise. In order to substantiate his contention, Shri Bhandari, learned counsel for the appellant, placed reliance on *Narain v. The Chamber of Commerce Ltd.* Kishangarh 1969 RLW 107, a Division Bench judgment of this Court. This judgment has considered the evidentiary value of the endorsement made by the Registrar while registering the document. This Court held that:

As their Lordships of the Privy Council pointed out in *Gopaldas v. Shri Thakurji*, there is presumption that registration proceedings were regular and honestly carried out and unless it is shown that the person admitting registration before the Registrar is an imposter should be taken that the executant admitted the signature in the mortgage deed. There is another important case which has a bearing on the fact in issue. In *Gangamoy Bebi v. Triluckhya Nath Chowdhry*, it was observed by the Privy Council that registration is a solemn act to be performed in the presence of a competent official pointed to act as Registrar, whose duty it is to attend the parties and see that proper persons are competent to act and are identified to his

satisfaction and things done in his presence will be presumed to have been done duly and in order consequently, the admission of the executant before the Registrar must be deemed to have been proved by the endorsement of the Registrar in view of the provisions of sections 59 and 60. Such being the settled law, we are not prepared to accept the contention of learned counsel for the appellants that the certificate of the sub Registrar under Section 60 of the Registration Act cannot be considered as a substantive piece of evidence and that Section 68 of the India Evidence Act required independent proof that the alleged signature of the executant was in his hand writing and that mere proof of presentation of the document or its admission does not satisfy that requirement.

7. Reliance has also been placed by Shri Bhandari on *Govind Ram v. Abdul Wahab* AIR 1963 Raj. 23 in which the following observations were made by this Court:

There is authority for holding that the execution or authorship of a document is a question of a fact and can be proved like any other fact by direct as well as circumstantial evidence although it must be further presumed that the circumstantial evidence must be of sufficient strength to carry conviction. It has been further laid down that Section 67 does not lay down any specific mode of proof, and therefore, circumstantial evidence as a mode of proof of authorship or execution of documents is not excluded as a legitimate method of proving a document and such evidence may consist of the internal evidence in the document itself about the execution of which there is a dispute and the oral evidence of the witnesses to prove other surrounding circumstances.

8. On Ex. 1, there is the following endorsement made by the Sub-Registrar while registering the document:

Execution admitted before me by Mst. Rafiq Bibi, aged 34 years D/o Syed Faiyaz Ali Munsalman Khadimi of Iman, R/o Khadimi Mohalla, Ajmer, The said executant is identified by Hasmat Ali aged 26 years S/o Haji Niamat Ali Syed, Resident of Khadimi Mohalla, Ajmer. Further Zahoor Ali aged 37 years S/o Niawaj Syed of Khadimi Mohalla, Ajmer identified the above witnesses who is known to me personally.

9. This document was registered. Mst. Rafiq Bibi admitted execution of it as would be evident from the endorsement made by the sub-Registrar. Ex. 1 bears the thumb impression of well as the signatures of Rafiq Bibi. On Ex. I, there is an endorsement made by the sub-Registrar about the registration of the document, which says that the document has been registered and it has been copied out in the register in Vol. 1134 page 91/94. Thus, there is a certificate of registration of Ex. I as is required u/s 60 of the Registration .Act. 1908. Since there is a certificate of registration as required by Section 60 of the Registration Act, it has given the document a character of a registered document. The endorsement made by the Sub-Registrar on Ex. 1 goes to prove that its execution was admitted by the executant and, since it being an act performed by the Sub Registrar in his official capacity it should be presumed that he would not make such an endorsement unless the execution was admitted before him. On the basis of this endorsement, the Court can presume that the executant admitted the execution of the document before the Sub-Registrar. Undoubtedly, there cannot be further presumption that the deed had been executed by the executant with the knowledge of its contents.

10. Shri A.R. Salim, learned counsel for respondent No. 1, submitted that the respondent did not admit the execution of the deed and had contended that in the written statement that she was an illiterate & Pardanasin lady. He further submitted that in view of the finding recorded by the learned lower courts on issue No. 1, which is a finding of fact, this Court in second appeal cannot inquire into the correctness of the finding. Shri Salim learned counsel for respondent No. 1 also submitted that there is evidence on record to prove that fraud was played upon her by respondent No. 2. He further submitted that from the statement of Rafiq Bibi it is clearly established that she is an illiterate Pardanasin lady and she never put her signatures on Ex. 1, It was also urged by the learned counsel for respondent No. I that unless it is proved that the alleged document was read out and explained to her the document Ex. 1 should not be taken to have been proved against her. He has also urged that defendant No. 1 was Pardanasin lady and there is a clear finding recorded by the learned lower Courts and a finding whether a particular woman is a Pardanasin lady or not, is a finding of fact and cannot be assailed in second appeal. Shri Bhandari, learned counsel for the appellant, submitted (hat defendant No.] cannot be regarded as a Pardanasin lady. He

further submitted that there is enough evidence on record to prove that defendant No. 1, Rafiq Bibi was not Pardanasin lady in the true sense of the expression. He has drawn the attention of the Court to Ex. 10, Ex. 12, Ex. 13, Ex. 17, Ex. 18, Ex. A7, Ex. A8 and Ex. A9. On the basis of these documents the submission of Shri Bhandari is that Mst. Rafiq Bibi is not an illiterate as she had signed the document. Shri Bhandari also urged that she was dealing in money transactions and she did not observe parda from strangers. Shri Bhandari also submitted that the learned lower Courts did not consider the material evidence on record in this regard and, thus, the finding recorded by the learned lower Courts can be characterised as perverse finding and the same can be assailed in second appeal also. Shri Bhandari also submitted that Ex. 10, Ex. 12, Ex. 13 and Ex. 18 are the documents from public records and they have been duly proved to show that Mst. Rafiq Bibi is illiterate and she signs in Urdu, in which the lease deed Ex. 1 has been written. He also submitted that the trial Court has misread Ex. 18, a registered mortgage deed executed by her and proved by the petitioner holding that it bears the thumb impression of Rafiq Bibi and is not signed by her, whereas, actually it does not bear her thumb impression at all and was signed by her. On Ex. 13 which is a registered deed about the portion of the suit property, executed by her. There is evidence that it also bears her signatures. Ex. 15 is a compromise signed by the parties. In this document there is a mention of Ex. 13, sale deed dated 6th June, 1943 and Ex. A7, a decree sheet based on Ex. 15. This document also bears the testimony about the fact that Rafiq Bibi used to sign the documents. Thus, Shri Bhandari urged that the finding recorded by the learned lower Courts is perverse and contended to assail the finding in second appeal before this Court.

11. As regards Rafiq Bibi being a Pardanasin lady, his submission is that the term has not been understood by the learned lower courts. His submission is that the expression 'Pardanasin' does not mean that a lady observes Parda. A lady observing Parda may not be a Pardanasin lady in the legal sense of the term. The term Pardanasin has a special significance as one who is unable to understand transaction by virtue of the The Patna High Court in the manner in which she has been brought up. In order to support his contention Shri Bhandari relied upon *Andhi Kuer v. Rajeshwar Singh* : AIR1972 Pat325, *Ghulam Zuhra v. Habla*

Begum and Balmiki Singh Lalpuri Devi : AIR1981 Pat161 . In Andhi Kuer v. Rajeswar Singh (supra), the Patna High Court placed reliance on the observations made by the Supreme Court in Mst. Kharbhuja Kuar v. Jangbahadur Rai : [1963]1SCR456 , which are as under:

In India Paradanashin ladies have been give a special protection in view of the social conditions of the times, they are presumed to have an imperfect knowledge of the world, as by the Parda system they are practically cut or excluded from social inter course and communication with the outside world.

The Patna High Court in the above referred case had also observed that a lady observing Parda may not be a Pardanashin lady in the legal sense of the term. The term 'Pardanashin Lady' is not a term of Article It has special legal significance as one who is unable to understand the transaction by virtue of the manner in which she has been brought up.

12. In BalmikiSingh v. Lalpuri Den (supra), the case of Smt. Andhi Kuer v. Rajeshwar Singh (supra) was considered and relied upon. The case deals with the burden of proof in case the document is executed by a pardanashin lady. In Ghulam Zuhra v. Habla Begum (supra), there was codsideration as to under what circumstances a lady can be regarded as a Pardanashin lady. The court observed that the witnesses produced by the appellant no doubt have parrot like stated that the appellant was a 'Pardanashin Lady' but this alone however is not sufficient to give her such a status, unless the court is satisfied that she is really living in seclusion and not having any communication with strangers. The evidence on the record shows that she has rather behaved as a male member in her day to day dealings.

13. Another question that arose for consideration is how to deal with the question of burden of proof. In case a document is said to be executed by a Pardanashin lady. It may be taken to be an established principle that the onus to prove the due execution of a document by a Pardanashin lady would lie on the person who seeks to rely, on it for his claim and the court has to ascertain that the party executing the document has been a parer agent. The reason being that the ordinary presumption the a person understands the document to which he has

affixed his name does not apply in the case of a Pardanashin lady it is equally true that where one party alleges that the document was executed by a Pardanashin lady and the other party is able to prove that notwithstanding such an allegation, the lady could not be regarded as a Pardanashin lady and the legal protection to the lady in such a case would vanish. It is a principle that the burden heavily lies on those who claim against the doer of a deed to establish by evidence that the real transaction was different. It can also be taken to be a rule that where a deed has been registered, it lies upon the person who objects it, to show the facts that may invalidate it. The plaintiff, Syed Waliuddin, has deposed in his statement that Ex. 1 is a lease deed and, on it Rafiq Bibi and Syed Waliuddin Salheem had put their signatures in his presence. He has also deposed that Ex. 1 was read over to defendant No. 1 and she signed it after reading it. He has also deposed that the possession was delivered over the demised premises to Rafiq Bibi by him. PW 1 Syed Waliuddin was also examined in rebuttal and, has stated that Ex. 10, Ex. 11 and Ex. 12 were signed by Rafiq Bibi. Rafiq Bibi was also examined in rebuttal and, had stated that Ex. 10, Ex. 11 and Ex. 12 were signed by Rafiq Bibi. Rafiq Bibi was also examined and in her statement she deposed that she is an illiterate and does not know how to sign. She has also denied the execution of the lease deed Ex. 1. In her statement throughout she had not stated a word that she is a Pardanashin lady or that she is not engaged in independent transaction by virtue of the manner in which she was brought up or that she is living in seclusion and is not having any communication with male strangers. Shiv Ram has been examined by defendant No. 1 as DW 3. This witness has stated that he used to visit the house of Rafiq Bibi. He had taken the amount of interest from Rafiq Bibi. Rafiq Bibi in her statement also admitted this fact. She knew Shiv Ram who used to collect the amount of interest from her. There are two registered documents on record, one is Ex. 13 and another is Ex. 18. Ex. 13 is a sale deed executed, by Rafiq Bibi in favour of the plaintiff, which is dated 6th June, 1943. Ex. 18 is a registered mortgage deed executed by three persons, two are the defendants viz. Rafiq Bibi and Syed Nainul Salheem and third is the husband of Rafiq Bibi. This document was registered on 28th January, 1941. These documents bear the signatures of Rafiq Bibi and have been proved by PW 1. In rebuttal, there are other documents also, on which, as per the contention of the plaintiff, there are signatures of Mst.

Rafiq Bibi, but they have not been proved. Thus, the following circumstances are thereon the basis of which it can certainly be said that the document Ex. 1 lease deed was signed by the defendant and the contents of the document Ex. 1 are also proved, and that defendant No. 1 Mst. Rafiq Bibi is not a Pardanashin lady in the legal sense of the term. Ex. 1 lease deed is a registered document which was duly registered and there is a certificate of registration in it. In the endorsement it is clearly stated by the Sub-Registrar that the document was executed by Mst. Rafiq Bibi; (2) The plaintiff has clearly stated that Ex. 1 was signed by the defendants and that it was read out to the defendant No. 1 and she put her signatures after reading it; (3) There is evidence of DW 3 Shiv Ram who has deposed that he used to visit Rafiq Bibi's in case and she used to pay interest to him. This fact has been admitted by Mst. Rafiq Bibi herself; (4) Rafiq Bibi in her statement did not state a word that she is Pardanashin lady and that in the manner in which she was brought up she is not in a position to understand the transaction or that she was living in seclusion and not having any communication with male strangers; (5) Ex. 13 and Ex. 18 are the registered documents and have been proved by the plaintiff and on both the documents, which are original on record, the signatures of Rafiq Bibi are there; (6) That there are various documents on record to show that she was contesting cases in the Court. She appointed Shri K.G. Shrivastava as an Advocate. She also appointed Neki Dass, In her statement she has deposed that she used to do money transaction without the help of her husband. She has taken loans from different persons on a number of times; (7) There is no dispute about the fact that the plaintiff is the owner of the property; (8) There is no evidence to prove fraud or misrepresentation, as alleged by the defendant in her written statement and for which an issue was framed. In the written statement she indirectly admitted the execution of the lease deed Ex. 1 by stating that it was got executed by defendant No. 2 by misrepresentation. Defendant No. 2 who is also one of the executant of Ex. Mease deed, has not been examined and the case proceeded ex parte against him. There is evidence to prove this document against him, as PW 1. plaintiff, has clearly stated that this document was executed by both the defendants. There is no rebuttal to this part of the evidence.

14. In view of the above discussion and the evidence on record, which, in my opinion, the learned lower courts have not taken into consideration and, further the learned lower courts have not considered the legal meaning of the 'Paradanashin lady' and, failed to take into consideration that in the written statement there is ample admission of execution of the lease deed Ex. 1 and the facts mentioned in the endorsement can be used as a substantive piece of evidence, for which no proof is required under the Evidence Act, as would be evident from the following observations made by this court in *Narayan v. The Chamber of Commerce Ltd. Kishangarh* (supra):

Such being the settled law, we are not prepared to accept the contention of learned counsel for the appellants that the certificate of the Sub-Registrar under Sec. 60 of the Registration Act, cannot be construed as substantive piece of Evidence Act required independent proof that the alleged signature of the executant was in his hand writing and that mere proof of presentation of the document or its admission does not satisfy that requirement.

15. The finding recorded by the trial court on issue No. 1 is perverse finding so far as it relates to the execution of Ex. 1. It is not a case of erroneous finding of fact, but it is a case where there is substantial error and defect in procedure. It is a case where the learned lower Court have discarded the material evidence and misdirected itself on a point of law in dealing with the evidence. I am of the view that the plaintiff has been able to prove that document Ex I was executed by defendants No 1 and 2. The document was read over to her and that defendant No. 1 failed to prove fraud or misrepresentation as contended by her in her written statement. She has also failed to prove that she was a Pardanashin lady in the legal sense of the term. As discussed above, she can be taken to be illiterate except to the extent that she has put her signatures over different documents. However, this will not make any change in shifting the burden. It Was open to her to prove her assertion regarding challenge to document Ex. 1. The burden was upon her to prove by positive evidence that the real transaction was different. Defendant No. 1 further celled to prove the alleged fact which could have invalidated the document. On the basis of the evidence of the plaintiff coupled with the legal inference which can be drawn on the basis of the implied admission

made in the written statement it can certainly be said that the execution of document Ex. 1 stands proved and, when a document is proved to bear the executant's signatures, the presumption arises that it was signed with the intention of execution, as execution of a document means that an executant must have signed or put his thumb impression soon after the contents of the document have been fully stated and read by the executant before he puts his signature thereto. The case of Kalyanmal v. Ahmed Uddin Khan AIR 1934 PC 208 referred by the learned counsel for the respondent does not support, in any way, the case of respondent No. 1. Firstly, respondent No. 1 is not a Pardanashin lady in the legal sense of the term and even if she is regarded as a Pardanashin lady, there is a very strong presumption on the basis of the endorsement made on document Ex. 1 by the Sub-Registrar while registering the document, which leads me to believe that the document was executed by Mst. Rafiq Bibi, in the sense that it must have been read over to her and that she understood its nature and effect. Shri A.R. Salim, learned counsel for the respondent also relied upon Rodu v. Board of Revenue . This ruling is not at all applicable to the facts and circumstances of the present case In that case, it was observed by this Court that when objections are raised in the memorandum of appeal or division, and they are not pressed at the time of hearing arguments, the presumption would be that they have been abandoned. This is not the position in this case. Thus, I am of the opinion that the plaintiff have proved that the document Ex. 1 was executed by defendants Nos. 1 and 2 and, consequently, both the defendants are joint tenants in the suit property since 29th March, 1947, on a monthly rent of Rs. 10/-. There is no doubt that the plaintiff is the owner of the suit property. I am also of the view that the defendant failed to prove any fraud or misrepresentation invalidating the document. Thus, issue No. 4 is decided against defendant No. 1. Accordingly, issue No. 1 is decided in favour of the plaintiff and issue No 4 is decided against the defendant.

16. In the result, I allow the appeal filed by the plaintiff appellant against both the defendants respondents and decree the suit of the plaintiff for rent from 29th January, 1953 to 23rd January, 1956, amounting to Rs. 360/- and mesne profits at rate of Rs. 10/- per month subject to the payment of court fees. As the defendants have committed default in payment of rent for more than six month when the suit was filed a decree for eviction is also passed against both the defendants. The

defendants are given six month' time to hand over the possession of the demised premises to the plaintiff, subject to their furnishing an undertaking before the trial court for handing over vacant possession within the time specified in the judgment and to pay damages for use and occupation at rate of Rs. 10/- before the executing court.

17. The parties are left to bear their own costs.

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